

EC appointment law: The key takeaways from Supreme Court's split verdict

The 2023 law replaced the CJI on the selection committee with a Union Cabinet Minister nominated by the Prime Minister. The government, therefore, got two representatives on the three-member panel, alongside the Leader of Opposition.

Written by: [Amaal Sheikh](#) 4 min read New Delhi Updated: Sep 23, 2026 09:16 PM IST



The Supreme Court bench of Justices Dipankar Datta and Satish Chandra Sharma differed on the merits of the case. (Wikimedia Commons)

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A two-judge bench of the Supreme Court on Wednesday (September 23) referred petitions challenging the 2023 law on the appointment of the Chief Election Commissioner (CEC) and other Election Commissioners (ECs) [to the Chief Justice of India](#).

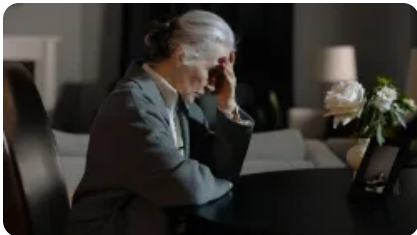
While the bench of Justices Dipankar Datta and Satish Chandra Sharma differed on the merits of the case, they eventually agreed that the matter should be placed before the Chief Justice of India (CJI) for constituting a bench of appropriate strength to avoid any delay in the proceedings.

Here's why that law came under challenge, and the key takeaways from the Supreme Court's reference:

What is the 2023 law on appointment of Election Commissioners?

The challenge to the Chief Election Commissioner and Other Election Commissioners (Appointment, Conditions of Service and Term of Office) Act, 2023 traces its origins to the Supreme Court's judgment in *Anoop Baranwal v. Union of India* in March 2023.

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Noting that Parliament had not enacted a law governing appointments to the Election Commission despite Article 324 of the Constitution contemplating one, the court had laid down an interim mechanism under which appointments would be made by a committee comprising the Prime Minister, the Leader of Opposition in Lok Sabha and the Chief Justice of India.

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The bench had underlined the importance of an independent Election Commission and observed that those entrusted with conducting elections must be insulated from executive influence.

Parliament subsequently enacted the Chief Election Commissioner and Other Election Commissioners (Appointment, Conditions of Service and Term of Office) Act, 2023.

But the law replaced the CJI on the selection committee with a Union Cabinet Minister nominated by the Prime Minister. The government, therefore, got two representatives on the three-member panel, alongside the Leader of Opposition.

What did the Supreme Court say while referring the matter to a larger bench?

1. Split verdict — placed before the CJI

The two judges disagreed on the merits of the case, as to whether the present bench could decide the challenge or whether it should be heard by a Constitution Bench. Justice Datta said the constitutional principles involved in the case are already settled and the court only has to test the 2023 law against them. Justice Sharma said the case raises an important constitutional question that has not been decided before.

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However, on the procedural aspect, both the judges agreed that instead of sending the disagreement to a three-judge bench which would eventually create another round of litigation and delay adjudication on the constitutional question, they directed that the matter be placed before the Chief Justice of India to consider setting up a five-judge Constitution bench.

2. Independence must be 'seen' to exist

Justice Datta said the Election Commission must not only be independent but must also be seen as independent by the public. Using a cricket analogy, he said even correct decisions can come under suspicion if the process of choosing the umpire appears unfair. The issue, he said, is as much about public confidence as it is about actual independence.

3. LoP's role may become 'ornamental'

Looking at the composition of the selection committee, Justice Datta said a Cabinet minister nominated by the Prime Minister is unlikely to disagree with the PM because of collective responsibility within the government. Thus, "the presence of the leader of opposition in this election committee becomes largely ornamental".

He said the petitioners' argument that the law gives the executive overwhelming influence over appointments "does appear to have substance".

4. Collegium system

Justice Datta pushed back against the common claim that judges appoint judges, saying that their appointment process involves the executive as well. He flagged concerns over the executive selectively clearing collegium recommendations and questioned if a neutral member would be unnecessary in the EC selection process because the collegium too functions without an outsider.

5. Long delays

Both the judges expressed concern over the time taken to decide Constitution bench matters. They noted that some constitutional references have remained pending for years and urged the Chief Justice of India to consider creating a Constitution Bench to deal with such cases more quickly.

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